CRIMINAL ORIGINAL.

Before Tek Chand, J.

JAI PRAKASH AND OTHERS,—*Petitioners.*

versus

RAM SARUP AND OTHERS,—*Respondents.*

Criminal Original No. 26 of 1957.

1958

March, 27th

Contempt of Courts Act (XXXII of 1952)—Receiver appoited under Order 40, Rule 1, C.P.C.—Interference with his possession—Whether amounts to contempt—Possession

of Receiver—Nature of—Whether can be disturbed by another Court—Judicial Officers Protection Act (XVIII of 1850)—and section 43 of the Police Act—Whether affords a defence under Contempt of Courts Act—Contempt of Courts Act—Whether creates on offence—Code of Criminal Procedure (V of 1898)—Section 197—Whether applicable to proceedings under the Contempt of Courts Act—Belated apology—Whether extenuating circumstance.

Held, that nobody can disturb the possession of the Receivers appointed by the Court with impunity and if he does so, he is clearly guilty of the contempt of Court. The possession of the Receiver is that of the Court and all the goods of which the receiver is put in charge, are in *custodia legis* and the possession of the Receiver cannot be interfered with or disturbed by anyone, not even by a person claiming a title paramount. This possession cannot even be interfered with on the ground that the order appointing him ought not to have been made, for, all such persons, who find themselves aggrieved by the order of the Court, should question its validity in proper proceedings. So long as the order appointing a receiver has not been vacated, modified or set aside on appeal the order must be obeyed however, unreasonbale and harsh it may appear to be. It is no defence to the charge of contempt, by interfering with the possession of the Receiver, that the order was erroneous or unjustified or ill-advised or even contrary to law, so long as, the Court making the order acted within the ambit of its jurisdiction. Such an order can only be questioned in appeal and so long as the Court has the authority to pass the order, it cannot be disobeyed. Even if the suit between the parties before the Court of the Subordinate Judge was collusive, the appointment of a Receiver cannot is ignored and so long as it stands the Receiver's possession must not be disturbed.

Held, that a Receiver appointed by a Court is the hand of the Court, so to speak, for the purpose of holding the property of the litigants whenever it is considered necessary that it should be kept in the grasp of the Court in order to preserve it, *pendente lite*. The possession of the Receiver cannot be disturbed without the leave of the Court as the property is regarded *in gremio legis*, in the custody of the law, for the benefit of the party who may be ultimately

found to be entitled thereto. The Courts are duty bound to protect a Receiver's possession not only against acts of violence or intimidation, but even against suits at law. It is a proposition, which is well sustained by authorities, that when a Court havng jurisdiction in the matter, appoints a Receiver to take charge of the property forming subject-matter of the litigation, then no other Court of co-ordinate jurisdiction has any power or authority to interfere or meddle with the property in the hands of the Receiver. The Court appointing the receiver must be left untrammelled in its administration of the property regardless of the fact whether the original appointment of the receiver was erroneous or improvident, for otherwise orderly administration of justice cannot proceed. It is no defence for a person against unauthorised interference with the possession of a Receiver to state, that he considered the appointment of the receiver ill-advised or illegal.

Held, that the Judicial Officers Protection Act protects judicial officers and other persons who are required to execute the lawful warrants and orders of judicial officers, from being sued in any civil Court. The immunity granted under this Act refers to acts done in good faith by judicial officers and is confined to suits in civil Court. This Act cannot be used as a shield in proceedings under the Contempt of Court Act. Nor does section 43 of the Police Act fortify a police officer against acts of contempt of Court.

Held, that Contempt of Courts Act does not create an offence. It recognises the jurisdiction which inheres in the High Court as the highest Court of record in the State. Section 197 of the Code of Criminal Procedure was not intended to apply to such proceedings.

Held, that an apology, which is not a free and frank expression of contemner's contrition indicating a penitent attitude as to his guilt, is absolutely of no avail, when throughout, the respondent was justifying his conduct. This wavering and vacillating expression of regret cannot take the sting out of contempt. An apology is intended to be genuine expression of the sincere regrets of the contemner, who frankly admits his guilt and seeks forgiveness.

Case law reviewed.

Petition under section 3 of the Contempt of Courts Act No. 32 of 1952, praying that a suitable action be taken against the respondents for committing contempt of the Court of Shri Om Parkash Aggarwal, Sub-Judge, 1st Class, Jagadhri.

HAR PARSHAD and LAKSHMI CHAND, for Petitioners.

J. K. SHARMA, H. L. SARIN and SURINDER SINGH, for Respondents.

JUDGMENT.

Tek Chand, J.

TEK CHAND, J.—Three petitioners, Jai Parkash, Ram Krishan and Ram Gopal have presented this petition under section 3 of the Contempt of Courts Act, praying that suitable action should be taken against respondents 1 to 9 who are alleged to have committed contempt of Court of Shri Om Parkash Aggarwal, Sub-Judge, I Class, Jagadhri. The first petitioner and his three brothers were engaged in business at Jagadhri which they were carrying on in partnership in two firm, names i.e. Messrs. Massadi Mal Fateh Chand and Messrs Parkash Metal Industries. The former partnership dealt in purchase and sale of non-ferrous metals while the latter used to manufacture utensils. On 22nd of July, 1957, Rajinder Kumar one of the partners, sued the other partners and sought dissolution of the partnership and rendition of accounts. The suit was pending in the Court of Sub-Judge, First Class, Jagadhri, Shri Om Parkash Aggarwal, and on an application having been made by the plaintiff under Order 40, rule 1, Civil Procedure Code, the civil Court appointed petitioners 1 and 2 as joint Receivers by its order dated 2nd of August, 1957. The joint Receivers were required to carry on the business of partnership for the time being and to submit thier reports as to its working.

their

On 12th of August, 1957, petitioner No. 2 submitted a report to the Court that in view of the

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

acute labour trouble it was not possible to carry on the business of manufacturing. The parties agreed before the Civil Court that the business of manufacturing the utensils should not be continued and it was ordered on 13th of August, 1957, that the manufacturing business should be stopped. The joint receivers were nevertheless required to carry on the other business of the partnership for the benefit of the parties. It is then stated that the factory of "Parkash Metal Industries" was consequently closed and the services of the employees of the factory were terminated with effect from 19 hours of 13th of August, 1957. It is stated in the petition, that it was notified, that the employees could receive their legal dues from the receivers and the statement of the dues of every one of the employees were exhibited at the main gate of the factory, and that out of the total number of 140 employees, there were 56 who did not accept the dues tendered to them, whereas, the others did. These 56 started causing obstruction. In view of their obstructionist conduct towards the Receivers, the joint Receivers made a report to the above effect to the Court. On 10th of October, 1957, they reported that they were unable to carry out the duties cast on them and there were lying in the factory raw. finished and unfinished goods weighing about 2500 maunds, which they wanted to dispose of for the last 1½ months, but were being prevented from doing so by the employees. The civil Court was approached with a request to appoint some Court official to assist the joint Receivers in taking out the goods from the factory. It was also stated that respondents 1, 2 and 3 played principal part in preventing the Receivers from removing the goods.

On 10th of October, 1957, on an application made by the plaintiff to the Court, Jai Parkash

Jai Prakash and others
v.
Ram Sarup and others

Tek Chand, J.

petitioner No. 1 was relieved from receivership and by order dated 14th of October, 1957, petitioner No. 3 was made a joint receiver alongwith petitioner No. 2. An application was made that with a view to enable them to carry out their duties and to take charge of the property and the records of the partnership, a Court official may be appointed in whose presence that may be done. It was stated that the employees had pitched a tent outside the outer gate of the factory with a view to obstruct ingress and egress. The Court being satisfied with the request made, asked the Naib-Nazir to help petitioner No. 3, Ram Gopal. Some of the records were removed with the assistance of the Naib-Nazir and they were put in a room in the residential house of petitioner No. 1. Both the Receivers put their respective locks on the door of the room containing records.

With this act, the employees felt annoyed and on 15th of October, 1957, an application in the nature of a complaint was made by one Ram Sarup Sharma, an employee, in the Court of Shri Gurdial Singh, Magistrate I Class, Jagadhri, respondent No. 8. It was mentioned in that application at two places that possession of the records was with the two Receivers appointed by the Sub-Judge, Jagadhri. It was alleged that the employers would forge the record with a view to deprive the workers of their provident fund benefits. There was neither mention of any particular offence nor of any accused person. All that was stated was that the applicant was bringing to the notice of the Magistrate certain illegal acts committed by the management of Messrs Parkash Metal Industries, Jagadhri, under Shri Jai Parkash (petitioner No. 1). The Magistrate, on receipt of the complaint and without examining the complainant or his witnesses as required by section 200

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

Criminal Procedure Code, passed the following order:—

"Presented to-day. The allegations disclose commission of offences under sections 465 and 471, Indian Penal Code, which are non-cognizable. The S. H. O. Jagadhri is hereby directed under section 155, Criminal Procedure Code, to investigate the case.

(Sd) Gurdial Singh,
Magistrate I Class,
15th October, 1957.

On 16th of October, 1957, respondent No. 9 Ch. Ram Datt, Sub-Inspector of Police Jagadhri, called petitioners Nos. 2 and 3 to the police post and asked them to hand over the record relating to Parkash Metal Industries, which were in their possession as Receivers. The petitioners contend that they told him that they were holding the record as Receivers on behalf of the Court of Sub-Judge, and that they could not do so without the Court's order. They also told him that if he wanted them to hand over the records, he should obtain the order of the civil Court to that effect. It is then alleged that the petitioner No. 3, Ram Gopal, was again called at the police post where he was told by respondent No. 9 that the records of the factory for the year 1953-54 must be handed over to him, but petitioner No. 3 told him that the order of the civil Court should be shown to him. Respondent No. 9 is said to have stated that it was not necessary for him to obtain an order of the civil Court. It is said that he threatened petitioner No. 3 to produce the records on pain of arrest. On this, out of fear Ram Gopal petitioner No. 3 handed over the key of his lock to respondent No. 9, Ch. Ram Datt, who proceeded to the house of the petitioner No. 1 where the

record was. When he saw that there were two locks, he desired Ram Gopal petitioner to break open the other lock which had been put up by the second receiver Ram Krishan (Petitioner No. 2). On Ram Gopal's refusal, the Sub-Inspector posted one head constable and a foot constable at the house with the direction not to allow anybody to enter the premises.

On 16th of October 1957, respondent No. 9 Ch. Ram Datt, made a report that it was necessary to take the records of the Parkash Metal Industries into possession, that Ram Krishan and Ram Gopal were the receivers appointed who had the records, and that Ram Krishan receiver evaded production of the records. As there was danger of the records being done away with, he asked that a warrant of search should be given to him. On this report, Shri Shiv Dayal Sharma, S.H.O. made an endorsement that the grounds were genuine and the search warrant was necessary in the interests of justice. The Magistrate, before whom the papers were placed, ordered on 17th of October, 1957, that search warrant be issued under section 96, Criminal Procedure Code, as prayed for because he considered that the purposes of investigation would be served by such a warrant.

On 17th of October, 1957, Ch. Ram Datt again sent for petitioner Ram Gopal and required him to accompany him as he wanted to take possession of the records. On the inquiry of the petitioner Ram Gopal as to whether the order of the civil Court had been obtained, he was told that he required no such order. On reaching the house where the records were kept, one lock was opened with the key which had been supplied by Ram Gopal petitioner and the other was got broken open by respondent No. 9.

Jai Prakash and others
v.
Ram Sarup and others

Tek Chand, J.

The petitioners then stated that on 18th of October, 1957, an application was made on behalf of the first petitioner by his two counsel, to the Magistrate (respondent No. 8) asking for inspection of the record relating to the application made before him. This application was made at Bilaspur where he had gone on tour for two days. It is stated that on one pretext or the other, the Magistrate did not allow inspection of the file till 26th of October, 1957.

On 19th of October, 1957, petitioners 2 and 3 applied to the Court of the Sub-Judge for the taking of suitable action for contempt of Court against respondent No. 9, and the Head Constable and the foot constable. Notices were issued to the three persons on 19th of October, 1957 for 25th of October, 1957. The petitioners alleged that the police officials concerned evaded service and did not appear till 6th of November, 1957.

On 24th of October, 1957, the two joint Receivers (petitioners 2 and 3) applied to the civil Court to depute Naib-Nazir and process-servers to assist the Receivers in taking out goods from the factory premises for disposal, and that they should see that the workers did not cause obstruction. At about 4-30 P. M., the two receivers got loaded copper pieces in truck No. PNE 6141 in the presence of Naib-Nazir and the process-servers. Outside the main gate of the factory, respondents 1 to 4 stood in front of the truck and shouted to the workers to come and prevent the truck from proceeding further by lying in front of it. It is then stated that on this, respondents 5 to 7, who are also workers, lay themselves down in front of the truck and thus caused obstruction in the work of the Receivers. The truck could not proceed

further and had to be brought back to the factory premises and was unloaded. A detailed report of the above incident was made to the Court by Naib-Nazir on 24th of October, 1957 (annexure F). Photographs of what was taking place were also taken. It is alleged that respondent No. 4, who is the General Secretary of the Metal Mazdoor Sabha, had been instigating the workers of the factory to cause obstruction resulting in flouting of the authority of the civil Court. It was also stated that respondent No. 4 was, because of his influence, instrumental in the petitioners being harassed.

On the above allegations, it was prayed that all the respondents were guilty of contempt of Court and should be proceeded with accordingly and punished.

The case of the respondents may be examined in three separate categories, namely, the case as set up by respondents 1 to 7, the defence of the Magistrate respondent No. 8, and that of the Sub-Inspector of Police respondent No. 9.

Respondents 1 to 7 submitted their written statement and stated that the suit pending in the Court of the Sub-Judge was collusive and the application for appointment of Receivers, was not *bona fide*, it being a device for closing the factory and throwing the workmen out of employment. It was also contended that the factory could not be legally closed during the pendency of the industrial dispute which was pending before the Industrial Tribunal. The workers contended that they had told the proprietors that the goods could be removed by the Receivers only and as the proprietors did not desist from their activities, the workers pitched their tent to watch their own interests. They admitted that a complaint had

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

been lodged on their behalf, through Ram Sarup respondent No. 1, with the Magistrate, Jagadhri, to the effect that the first petitioner had forged certain entries regarding the service record of some of the workers. They admitted the presence of the Naib-Nazir on the spot on 24th of October, 1957. alongwith the Receivers, but denied having caused any obstruction. They also alleged that the workers did not want that the goods should be removed from the factory and requested some respectable persons assembled at the spot to persuade the proprietors and Receivers not to remove the goods until their dues were cleared. These respectables, thereupon, appealed to the proprietors and the Receivers not to remove the goods and to resolve the differences by mutual talks. These persons prevailed upon the receivers to get the truck containing the material of the factory unloaded and the receivers thereupon unloaded the truck. It is alleged that they did so out of their own free will and not as a result of any pressure.

It is not specifically denied that the photographs produced by the petitioners were taken on 24th of October, 1957, though it was suggested that probably they related to another incident of 14th of August, 1957. Photograph (annexure H) shows that two persons are lying in front of the truck and one is sitting before it.

Respondent No. 8, Shri Gurdial Singh, Magistrate submitted a long and argumentative affidavit, dated the 19th of January, 1958, in which he justified all the steps taken by him and maintained that the law gave him a free hand to act in the manner in which he proceeded. He also claimed immunity from being proceeded against in view of section 77 of the Indian Penal Code. On 21st of January, 1958, he swore another affidavit and claimed that he had not committed any contempt

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

and whatever he had done, was in order to further the cause of justice, but in case this Court did not accept his contention, then he tendered an apology for his act. In this Court he submitted an unqualified apology and attributed his conduct to his inexperience and said that he had been appointed for the first time in February, 1957, and this was the first occasion on which he was required to issue search warrant.

On behalf of respondent No. 9, Sub-Inspector Ram Datt, it was maintained that whatever he did, was done in obedience to the orders of his superiors and of the Court, which, in view of the provisions of section 43 of the Police Act, it was incumbent upon him to do. He also claimed immunity under the Judicial Officers Protection Act of 1850, and section 36 of the Code of Criminal Procedure. It was also contended on his behalf that Ram Gopal petitioner was not subjected to any coercion or pressure, and that when required to hand over the records, neither of the Receivers told him to refer to the civil Court.

I may first take up the case of the workers, respondents No. 1 to 7. I may say at the outset that the attitude adopted by them and by their counsel is unhelpful and unfortunate. They have expressed no regret and denied having done the various acts attributed to them and they have throughout been recusant. What has been submitted to me in the main is that the application for the appointment of Receivers was not *bona fide* and it was merely a device for closing the factory which could not be done during the pendency of an industrial dispute, but this objection is beside the issue. I do not see any substance in the submission that the workers told the proprietors that Receivers alone should receive the goods and as the proprietors did not desist from their alleged

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

activities, the workers pitched up a tent towatch their interests.

After a careful consideration of the respective contentions of the parties, the denial of the respondents as to the various acts of obstruction which they offered to the Receivers, is unconvincing. Apart from the affidavits of petitioners Jai Parkash and Ram Gopal, there is the report, annexure F, by Naib-Nazir Manphul Singh, dated 24th of October, 1957, submitted to the Court of Subordinate Judge, Jagadhri. It is stated in the report that when the Receivers after getting truck No. PNE 6141 loaded with copper pieces were about to go out of the gate of the factory, respondents Nos. 1 to 4, Ram Sarup, Tilak Raj, Kans Raj, and Madhusudhan Saran, stood before the truck and raised shouts that the truck be surrounded and not permitted to proceed, and that they should lay themselves before the truck (*Truck ko gher lo, mat jane do, truck ke age let jao*). The Naib-Nazir then stated that Ram Dia, Lakhan Singh and Atma Ram, respondents Nos. 5 6 and 7 laid themselves before the truck and prevented the truck from proceeding. Under the circumstances, he stated that it became impossible for the truck to go out and some photographs were taken on the spot. The truck was taken back into the factory and the goods which it was carrying were put back into the factory building.

The conduct of respondents Nos. 1 to 7 leaves no room for doubt that they interfered with the possession of the Receivers with full knowledge that they were the Receivers appointed by the Court. Nobody can disturb the possession of the Receivers appointed by the Court with impunity and if he does so, he is clearly guilty of the contempt of Court. The possession of the Receiver is that of the Court and allthe goods which the receiver

Jai Prakash and others
v.
Ram Sarup and others

Tek Chand, J.

is put in charge of are in *custodia legis* and this possession of the Receiver cannot be interfered with or disturbed by anyone, not even by a person claiming a title paramount. This possession cannot even be interfered with on the ground that the order appointing him ought not to have been made, for all such persons, who find themselves aggrieved by the order of the Court, should question its validity in proper proceedings. So long as the order appointing Receiver has not been vacated, modified or set aside on appeal, the order must be obeyed, however, unreasonable and harsh it may appear to be. It is no defence for a charge for contempt by interfering with the possession of the Receiver that the order was erroneous or unjustified or ill-advised or even contrary to law, so long as, the Court making the order acted within the ambit of its jurisdiction. Such an order can only be questioned in appeal and so long as the Court has the authority to pass the order, it cannot be disobeyed. Even if the suit between the parties before the Court of the Subordinate Judge was collusive, the appointment of a Receiver cannot be ignored so long as it stands and the receiver's possession must not be disturbed. *Vide Allahabad Bank. Limited,* v. *Raja Ram,* (1), and *Kilachand Devchand* v. *Ajodhya Prasad, Sukhenand,* (2).

Lord Chancellor, Lord Truro in *Russell* v. *East Anglian Railway Company,* (3), observed:—

> "I know of no act which this Court may do, which may not be questioned in a proper form, and on a proper application; but I am of opinion that it is not competent for anyone to interfere with the possession of a receiver, or to disobey

(1) A.I.R. 1933 Lah. 671.
(2) A.I.R. 1934 Bom. 452.
(3) 42 E.R. 201 at p. 206.

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

an injunction or any other order of the Court, on the ground that such orders were improvidently made. Parties must take a proper course to question their validity, but while they exist they must be obeyed. I consider the rule to be of such importance to the interests and safety of the public, and to the due administration of justice, that it ought on all occasions, to be inflexibly maintained. I do not see how the Court can expect its officers to do their duty, if they do it under the peril of resistance, and of that resistance being justified on grounds tending to the impeachment of the order under which they are acting."

In the words of Sir John Romilly in *Ames* v. *The Trustees of the Birkenhead Docks* (1):—

"There is no question but that this Court will not permit a receiver, appointed by its authority, and who is, therefore, its officer, to be interfered with or dispossessed of the property he is directed to receive, by anyone, although the order appointing him may be perfectly erroneous; this Court requires and insists that application should be made to the Court, for permission to take possession of any property of which the receiver either has taken or is directed to take possession * * * * * *."

A receiver appointed by a Court is the hand of the Court, so to speak, for the purpose of holding the property of the litigants whenever it is

(1) 20 Beav. 332 (353)=52 E.R. 630.

Jai Prakash and others *v.* Ram Sarup and others

Tek Chand, J.

considered necessary that it should be kept in the grasp of the Court in order to preserve it, *pendente lite*. The possession of the receiver cannot be disturbed without the leave of the Court as the property is regarded *in gremio legis*, in the custody of the law, for the benefit of the party who may be ultimately found to be entitled thereto. The Courts are duty bound to protect a Receiver's possession not only against acts of violence or intimidation but even against suits at law. It is a proposition, which is well sustained by authorities, that when a Court having jurisdiction in the matter, appoints a receiver to take charge of the property forming subject-matter of the litigation. then no other Court of co-ordinate jurisdiction has any power or authority to interfere or meddle with the property in the hands of the receiver. The Court appointing the receiver must be left untrammelled in its administration of the property regardless of the fact whether the original appointment of the receiver was erroneous or improvident, for otherwise orderly administration of justice cannot proceed. It is no defence for a person against unauthorised interference with the possession of a receiver, to state, that he considered the appointment of the receiver ill-advised or illegal.

Under no pretence was it open either to respondents Nos. 1 to 7 or to the Magistrate, respondent No. 8, or to the Sub-Inspector of Police, respondent No. 9, to interfere with, or disturb the possession of property which was already in custody of a receiver appointed by a Court. Neither a stranger nor even another Court can disturb the possession of a receiver merely because of the illegal appointment of the receiver, for if it were otherwise, there would be unseemly conflicts between Courts embracing same subjects and persons, endangering the administration of justice.

Jai Prakash and others
v.
Ram Sarup and others

Tek Chand, J.

Vide 45 Am. Juris, sections 165, 166 and 170; and 75 C. J. S. section 119, 120 and 122.

In A. M. *Dunne* v. *Kumar Chandra Kishore*, (1), Calcutta High Court held that a Magistrate had no jurisdiction to interfere with a receiver in respect of the possession of the estate, without the sanction of the Court appointing him, as his possession was the possession of the Court.

It is urged by the petitioners' counsel that the Magistrate, respondent No. 8, knowing full well that receivers had been appointed, committed a series of irregularities which resulted in effective interference with the possession of the Receivers. In the application made to the Magistrate on 14th of October, 1957, by Ram Sarup (annexure D) the complainant had himself stated that the record was in the possession of the Receivers appointed by the Subordinate Judge, Jagadhri, which should be taken possession of. The Magistrate, without doubt must have known that he was asked to interfere with the Receivers' possession. That application amounted to an information in a non-cognizable case and had it not been for the order of the Magistrate under section 155(2) of the Code of Criminal Procedure, the Sub-Inspector of Police, respondent No. 9, would not have had any pretext for taking the investigation into his hands. The Magistrate in this case did not examine the complainant. He merely looked at the complaint and directed the Station House Officer to investigate the case under section 155, Criminal Procedure Code. On 16th of October, 1957, respondent No. 9 made a report, that search warrant should be given, as was recommended by the Station House Officer and the Magistrate by his order, dated 17th of October, 1957, issued search warrant under section 96 of the Code of Criminal Procedure.

(1) I.L.R. 30 Cal. 593.

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

In a Full Bench decision of the Lahore High Court, *Muhammad Shafi, Advocate* v. *Choudhry Qadir Bakhsh, Magistrate, First Class, Lahore* (1), an *ad interim* injunction had been issued by a Subordinate Judge requiring a party not to continue with the proceedings in the Magistrate's Court. When this was brought to the notice of the Magistrate by the counsel, he used contemptuous language regarding the order of the Civil Court. It was held by the Full Bench that the remarks made by the Magistrate amounted to a serious contempt of the Court of the Subordinate Judge, and the Magistrate who was found guilty of the contempt of the Court of the Subordinate Judge, was ordered to pay a fine of Rs. 50. Abdul Rashid, C.J., observed at page 273:—

> "The remarks made by Chaudhari Qadir Bakhsh amount to serious contempt of the Court of Mian Muhammad Salim and it is not only to protect that Sub-Judge as a private individual that action should be taken against the respondent, but because the Sub-Judge was dispensing justice and in doing his duty was representing the State. Any insulting remarks made about him would excite in the minds of the people a general dissatisfaction against all judicial proceedings."

The High Court of Orissa in *State* v. *Sankar Charan Sahu*, (2), while adjudging a Magistrate and Sub-Inspector of Police guilty of contempt, imposed a sentence of fine upon them. In that case, the civil Court, in the execution of a decree, had issued a warrant of arrest against the judgment-debtor and handed it over to a process-server. Some difficulty was experienced in arresting the judgment-debtor. The judgment-debtor

(1) A.I.R. 1949 Lah. 270.
(2) A.I.R. 1952 Orissa 215.

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

appeared as an accused in the Court of the Magistrate and was ordered to be released on bail. In the meantime, the process-server learnt of the judgment-debtor's presence. The judgment-debtor also became apprehensive of his arrest and filed an application under section 144, Criminal Procedure Code, in the Court of the Magistrate for restraining the process-server of the civil Court from arresting him and claimed immunity from arrest under section 135, Civil Procedure Code. The Magistrate passed an order purporting to be under section 144, Criminal Procedure Code, restraining the civil Court process-server from arresting the judgment-debtor. The process-server met the judgment-debtor while he was proceeding to his home in his car and showed him the warrant and demanded the payment of the decretal amount. While the process-server and the judgment-debtor were engaged in conversation, a crowd collected there and the Sub-Inspector also reached with a few constables to prevent breach of peace. Till then the Magistrate's order under section 144, Criminal Procedure Code, had not been served on the process-server. Sub-Inspector showed that order to the civil Court process-server and allowed the judgment-debtor to proceed in the car. The net result was the release of the judgment-debtor from the custody of the civil Court process-server in consequence of the facility afforded to him by the Sub-Inspector of Police whereby the process-server was prevented from executing the process. As both the officers had tendered an unconditional apology, the High Court thought that a sentence of fine would suffice.

The High Court must necessarily take a serious view where responsible public officers act in a manner so as to obstruct the course of justice

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

or prevent the implementation of the orders of the Court. It was observed in a Full Bench decision of the Patna High Court in *King* v. *Parmanand* (1),:—

> * * * It must be pointed out that any enquiry with regard to a matter which is 'sub-judice' is bound to interfere with the even and ordinary course of justice. It is a cardinal principle, that when a matter is pending for decision before a Court of justice, nothing should be done which might disturb the free course of justice and this Court will discontenance any attempt on the part of any executive official, however, high he may be, to prejudge the merits of a case and to usurp the functions of the Court which has got seisin of the case."

The above observations were cited with approval in a Division Bench decision of Andhra High Court in *D. Jones Shield* v. *Ni Ramesam,* (2).

Against the Magistrate it was also urged that he acted in disregard of the provisions of law contained in sections 195 and 476 of the Code of Criminal Procedure. It is argued by the counsel for the Magistrate on the strength of *In re. Khimchand Narottam Bhavsar.* (3) and *K. Syamalambal Ammal* v. *M. S. Ramamurthi,* (4), that where an offence is committed by a receiver in excess of his authority, no sanction of the Court before prosecuting a Receiver is required. But in the present case the records had been placed by the receivers in the house of Jai Parkash petitioner No. 1, who

(1) A.I.R. 1949 Pat. 222—29
(2) A.I.R. 1955 Andhra 156.
(3) A.I.R. 1928 Bom. 493.
(4) A.I.R. 1948 Mad. 318.

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

was a party before the civil Court, besides being a receiver. It was for the civil Court if it thought expedient in the interest of justice, that an inquiry should be made into an offence under section 463 or section 471 of the Indian Penal Code, as referred to in section 195(2) of the Code of Criminal Procedure, to have made a preliminary inquiry, and then to have forwarded a written complaint to a Magistrate having jurisdiction. The Magistrate's conduct in this case transgressed the bonds of propriety and did result in interference with the administration of justice in the Court of the Sub-Judge and he neither acted reasonably nor without negligence and with due care. But on this record I cannot hold that it has been established with any degree of certainty that the interference on the part of the Magistrate with the course of justice was deliberate and intentional.

The Magistrate has tendered an apology which, though not entirely unconditional, appears to be genuine. He has expressed regrets and the transgression on his part appears to be more due to inexperience than on account of misguided notion as to his power or prestige. His conduct is not readily allowing the counsel to inspect the record of the case in his Court, though improper, cannot be held to amount to contempt of Court.

I am satisfied that he has fully realised the impropriety and gravity of his conduct and the purpose of justice will be served by an expression of disapprobation of his conduct by this Court and by giving him a warning that a repetition of such a conduct will not be viewed with leniency.

I may now take up the case against respondent No. 9, Ch. Ram Datt. He is said to have committed contempts first on 16th of October, 1957,

Jai Prakash and others
v.
Ram Sarup and others
———
Tek Chand, J.

when he required the Receivers to hand over their records to him and insisted on their production, despite having been informed that they could not do so without the order of the Court and they were holding the records on behalf of the Court. Later on, on the same day he again directed petitioner No. 3 that the factory records for the year 1953-54 must be handed over to him. When petitioner No. 3 said that the order of the civil Court should be shown to him this respondent replied that it was not necessary for him to obtain the order of the civil Court, and that he could get the records on his own authority. He also threatened the petitioner with arrest if the records were not handed over to him. On this, out of fear, Ram Gopal petitioner handed over the key of his lock to respondent No. 9. He then made Ram Gopal accompany him and the constables, to the house of Jai Parkash petitioner, where the records were kept under two locks of the joint receivers. When he found that the room had two separate locks, he asked Ram Gopal petitioner to break open the lock of the other Receiver Ram Krishan petitioner No. 2. On his refusal, he posted a Head-constable and a foot-constable at the house asking them not to allow anybody to enter the premises. On 16th of October, 1957, this respondent made a report of what had happened and that he could not get the records from the receivers, that he had posted police guard, and that it was necessary to obtain a search warrant. On this report, which was forwarded to the Magistrate through the Station House Officer and the Prosecuting Sub-Inspector, respondent No. 8 ordered on 17th of October, 1957, that search warrant be issued.

On 17th of October, 1957, respondent No. 9 again sent for the Receivers at the police post and required them to accompany him to the factory.

Jai Prakash and others
v.
Ram Sarup and others

Tek Chand, J.

Again on being reminded as to whether he had obtained the order of the civil Court, he replied that he required no such order. He made petitioner No. 3 open the lock and from there he took possession of two registers. He then proceeded to the house of petitioner No. 1 taking petitioner No. 3 with him. One lock was opened with the key of petitioner No. 3 and the other lock, which had been put by petitioner No. 2, Ram Kishan, the Sub-Inspector had it broken open, and then he searched the records there but did not take any other record into his possession. The above allegations are supported by the affidavit of petitioner No. 3.

Respondent No. 9, as clearly appears from his report, annexure E, knew that petitioners Nos. 2 and 3 had been appointed Receivers, that he wanted to take possession of the records, and that he posted a police guard by way of precaution outside the room in which the records were kept. In his written statement, he denied that the petitioners objected to the examination of the records by him without the prior leave of the Court. He also stated that the petitioners did not ask him to obtain the orders of the Court for the purpose.

I find it hard to believe, that the Receivers, who had been appointed by the Court, would have meekly submitted to the handing over of the records without even telling the Sub-Inspector that he should obtain the permission of the Court. In his written statement, it was further stated that petitioner No. 2 "was reported to be absconding." He admitted that on the next day the lock was got broken open by him in order to obtain entry into the room. It was, however, maintained that this was in accordance with law. Lastly, it was urged by him, that he acted under the command of the superior authorities, i.e., respondent No. 8 and the Station House Officer of the Police

Station, and that he was protected under section 43 of the Police Act (Act No. 5 of 1861).

The above resume leaves no room for doubt, that this respondent is clearly guilty of contempt of Court and he had full knowledge of the fact that the Receivers had been appointed by the civil Court. He, under threats, obtained the key from petitioner No. 3 and broke open the lock of petitioner No. 2 and obtained possession of the records from the factory premises which petitioner No. 3 was not willing to part with in the absence of the orders of the civil Court. When the respondent knew, that the records were in the custody of the receivers appointed by the civil Court, he should have applied to the Sub-Judge for permission to take the records. When petitioner No. 3 brought the desirability of obtaining the orders of the civil Court to the notice of respondent No. 9, the latter contemptuously told him that he required no such authority.

Mr. Sarin, his counsel, firstly argued that his client was protected under the Judicial Officers Protection Act (Act No. 18 of 1850). This Act protects judicial officers and other persons who are required to execute the lawful warrants and orders of judicial officers, from being sued in any civil Court. The immunity granted under this Act refers to acts done in good faith by judicial officers and is confined to suits in civil Courts. This Act cannot be used as a shield in proceedings under the Contempt of Courts Act. Mr. Sarin then referred to the provisions of section 197 of the Code of Criminal Procedure. Under this provision, Judges, Magistrates and other public servants, who are not removable from their office save by or with the sanction of a State Government or the Central Government,

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

cannot be proceeded with for the commission of any offence except with the previous sanction of the Central or the State Government. This section has no application to proceedings for contempt of Court. A similar defence was taken by a Magistrate when called upon to show cause for having committed contempt of Court in not showing proper respect to the orders of the Sessions Judge, in *State* v. *C. M. L. Bhatnagar*, (1). Both the learned Judges constituting the Division Bench held that section 197, Criminal Procedure Code, was not applicable to proceedings under the Contempt of Courts Act. The Contempt of Courts Act does not create an offence. It recognises the jurisdiction which inheres in the Court as the highest Court of record in the State. Section 197 of the Code of Criminal Procedure was not intended to apply to such proceedings.

Section 43 of the Police Act makes it lawful for a Police officer to plead, when any action or prosecution or any proceedings are held against him that he committed the act complained against under the authority of a warrant issued by a Magistrate. This plea cannot avail respondent No. 9 in this case. Obviously for the various acts of interference with the possession of the Receivers, committed by him on 16th of October, 1957, he had not the authority of a warrant issued by the Magistrate. The search warrant was obtained by him next day on his own initiative. The acts constituting contempt of Court were begun by him on 16th of October, 1957, and continued on subsequent dates. Moreover, the plea under section 43 of the Police Act does not fortify him against acts of Contempt of Court.

Mr. Sarin has also drawn my attention to section 23 of the Police Act according to which, it

(1) A.I.R. 1952 All. 56.

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent anthority. He cannot successfully seek protection under section 23 of the Police Act. The facts and circumstances of this case indicate with sufficient clarity and conviction, talk the interference with the possession of the Receivers on his part was deliberate and unlawful, despite his having known that the records, which he wanted to obtain, were in the custody of the petitioners appointed by the civil Court.

After having argued the case on behalf of the Sub-Inspector of Police, Mr. Sarin belatedly and half-heartedly expressed regret on behalf of his client. An appology, which is not a free and frank expression of contemners contrition indicating a penitent attitude as to his guilt, is absolutely of no avail, when, throughout, the respondent was justifying his conduct. This wavering and vacillating expression of regret cannot take the sting out of contempt. The halting and hesitating apology is not genuine and cannot be treated by me as a partial reparation on the part of the respondent. In a case like this, gravity of the offence can neither be diluted nor punishment staved off by a half-hearted apology made at the final stage. The only extenuating circumstance in this case appears to me to be, that this respondent was perhaps imperfectly alive to the gravity of his conduct in interfering with the possession of the Receivers and probably, transgressed the limits of propriety under the impression that he was giving effect to the direction issued by the Magistrate. For his acts of contemptuous intrusion on the property which was in the custody of the Court through its Receivers. the ends of justice will be served by passing a sentence of a fine on him. Respondent

Jai Prakash and others
v.
Ram Sarup and others

Tek Chand, J

No. 9, Ch. Ram Datt, Sub-Inspector of Police, is ordered to pay a fine of Rs. 50 and to pay one-third of the costs of these proceedings. In default of payment of fine, he shall undergo simple imprisonment for fifteen days.

The conduct of respondents 1 to 7 has been most reprehensible. They offered open resistance to the Receivers in carrying out their duties, in consequence of which, the truck loaded with copper, could not leave the factory and proceed to its destination. The Receivers apprehending obstruction in the discharge of their duties from respondents Nos. 1 to 7 and their co-workers, were compelled to seek from the civil Court the assistance of some Court official. According to the report of Manphul Singh, Naib-Nazar (annexure F) made to the Court, he on 24th of October, 1957, along with two process-servers, went to the factory and when the pieces of copper were loaded in the truck at the instance of the receivers, respondents Nos. 1 to 4 stood before the truck and called their companions to surround the truck and not to let it proceed. On this, respondents Nos. 5, 6 and 7 lay themselves before the truck with the result that it became impossible for the truck to proceed further. On their behalf there has not even been a half-hearted expression of regret. Their counsel raised pleas which were not even remotely relevant as defences for proceedings under Contempt of Courts Act. If there was any justification for their apprehension, that forgeries would be committed in the registers of the factory, a request could be made to the civil Court to seal such books, and this was not done. I cannot believe that the payment of their just dues could be endangered by removal or disposal of some of the goods, but assuming they had just apprehension, that could be set at

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

rest by resort to law. I do not accept the contention of the defence that the Receivers voluntarily and without pressure from the workers agreed to unload the truck. The conduct of respondent No. 4, who is the General Secretary of the Metal Mazdoor Sabha, is particularly reprehensible, as it was he, who instigated the workers, and at whose instance they offered obstruction to the receivers by surrounding the truck and preventing it from leaving the factory. He must share his responsibility for the various acts of obstruction amounting to contempt of Court to a greater degree than the other respondents.

Ordinarily, respondents Nos. 1 to 7 deserve to be sentenced to imprisonment, but taking into consideration the facts, that they were working under the influence of others and in what they might be considering to be the cause of the workmen generally, sentence of fine may prove to be sufficiently deterrent. I, therefore, find respondents Nos. 1 to 7 guilty of contempt of Court and direct that respondents Nos. 1, 2, 3, 5, 6 and 7 shall each pay a fine of Rs. 50 and in default to under go a sentence of fifteen days' simple imprisonment. They shall bear one-third of the costs of these proceedings.

Respondent No. 4, Madhusudan Saran, deserves deterrent sentence. I sentence him to pay a fine of Rs. 200 and in default, he shall undergo simple imprisonment for one month. He shall pay one-third of the costs of these proceedings.

The costs of these proceedings are assessed at Rs. 150.

The arguments in this case were concluded on 3rd of March, 1958, and after the above judgment

Jai Prakash and others
v.
Ram Sarup and others

Tek Chand, J.

had been written but before it could be signed and announced, an application, dated the 10th of March, 1958, was made on behalf of respondents Nos. 1 to 5 and 7 attaching written apologies from them, praying that they may be accepted. All that is stated is that profound regret is expressed for omission to tender apology in the original written statement.

I do not consider that the expression of regret is either geniune, or even amounts to an apology. I cannot treat the type of apologies that has been submitted, even as a mitigating circumstance. The apology in a case of contempt like this, is intended to be a genuine expression of the sincere regrets of the contemper, who frankly admits his guilt and expresses his contrition and seeks forgiveness. To an apology, as has now been tendered, the following observations of Vivian Bose, J. in *Sub-Judge, First Class, Hoshangabad* v. *Jawahar Lal-Ram Chand Parwar* (1), suitably apply:—

> "There appears to be an impression abroad that an apology consists of a magic formulas of words which has but to be uttered as an incantation at the last possible moment when all else has failed and it is evident that retribution is inevitable, to stave off punishment. It appears to be felt that a man should be free to continue unfounded attacks upon another's honour and character and integrity with the utmost license till the last possible moment and then when he is unable to stave off the consequences of his infamous conduct any longer, all he need do is to wave this magic formula referred to as an apology in a

(1) A.I.R. 1940 Nag. 407.

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

Judge's face in order to emerge triumphantly from the fray. Nothing can be further from the truth.

An apology is not a weapon of defence forged to purge the guilty of their offences. It is not an additional insult to be hurled at the heads of those who have been wronged. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong-doer's power. Only then is it of any avail in a Court of justice. But before it can have that effect it should be tendered at the earliest possible stage, not the latest, and even if wisdom dawns only at the appellate stage, the apology should be tendered unreservedly and unconditionally before the arguments begin and before the person tendering the apology discovers that he has a weak case and before the Judge (when that happens, as it did here) has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology; it ceases to be the full, frank, manly, confession of a wrong done which it is intended to be. It becomes instead the cringing of a coward shivering at the prospect of the stern hand of justice about to descend upon his head. It then deserves to be treated with the contempt with which cowards and bullies who do not hesitate to threaten others and to impugn their honesty and character without the

Jai Prakash and others v. Ram Sarup and others

Tek Chand, J.

slightest foundation and who cringe and wail when their own safety is at stake. are treated. * * Mere lip service to a formula without any contrition of heart will not do."

Mahajan, C.J., in *M. Y. Shareef and another* v. *Hon'ble Judges of the Nagpur High Court and others* (1), said:—

> "The proposition is well settled and self-evident that there cannot be both justification and an apology. The two things are incompatible. Again an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness."

I do not think, I can accept the apologies now submitted. They are in the nature of an afterthought and do not amount to free and frank admission of the impropriety of the respondents' conduct. These respondents throughout attempted to justify their conduct and the belated attempt, which is in the nature of a calculated volte-face, deserves to be discountenanced.

R.S.